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seq; Boxer Indemnity 1901, For. Rel. 1907, p. 174; Japanese Indemnity 1864, For. Rel. 1888, p. 1069, Moore's Digest, Vol. V, p. 749.)

Moreover, in distributing awards Congress has invoked and acted upon the same principle, giving the fund to whom it chose and cutting off from participation those whom it wished. For example, in appropriating money to meet the "French Spoliation" claims, Congress first charged the Court of Claims to determine the then present ownership of the various claims, after which and upon receiving the report of the court, it appropriated money to pay the claims but provided that it should go to the next of kin of the "original sufferer," specifically excluding assignees under bankruptcy proceedings and all others who did not represent the next of kin. (See 26 Stat., 897, 908; for interpretation of this statute, see *Bagge v. Balch* [1896] 162 U. S., 439.) Again, in dealing with the Alabama Claims award, Congress provided that the commission might award attorneys' fees to those appearing for claimants before the commission, but declared that—

"all other liens upon, or assignments, sales, transfers, either absolute or conditional for services rendered or to be rendered about any claim or part or parcel thereof provided for in this bill heretofore or hereafter made or done before such judgment is awarded and the warrant issued therefor, shall be absolutely null and void and of no effect." (18 Stats., sec. 18, p. 245; for interpretation of this statute see *Bachman v. Lawson* [1883] 109 U. S., 659.)

#### BOTH THE EXECUTIVE AND CONGRESS HAVE CERTAIN PLENARY POWERS OVER SUCH FUND AND THE DISTRIBUTION THEREOF

When the fund in settlement of claims is received from the foreign government, either as the result of diplomatic adjustment or of international arbitration and following the determination of the validity and amount of the claim, the national jurisdiction attaches thereto and normally it is thereafter dealt with in accordance with the rules and principles of national municipal law and not international law.

Such a fund so received at once becomes subject to the exercise of two powers—that of the executive or political branch of the government and that of the legislative branch. Roughly the jurisdictions of these respective powers are as follows:

##### *Control by the executive*

After the fund is received from the foreign government, the political branch of the government still deals with it in so far as there may be

international questions involved, such for example as the refunding of the award if obtained by means of fraud or imposition, or the making of provision for the resubmission of cases to arbitration (in the exercise of which power, the Senate obviously may be involved). In these matters it would seem that the powers of the executive are more or less plenary. The question has never, so far as has been observed, been adequately discussed, though it received some attention by the Supreme Court in connection with the various *La Abra* and *Weil* cases. In *Frelinghuysen v. Key* ([1883] 110 U. S., 63), where complainants sought to compel, by mandamus, the distribution of the *Weil* award by the Secretary of State, who was withholding such sums pending the action of the Senate on a treaty providing for a rehearing of the cases, the court, in denying the writ, said:

"All we decide is, it was within the discretion of the President to negotiate again with Mexico in respect to the claims, and that as long as the two governments are treating on the questions involved, he may properly withhold from the relators their distributive shares of the moneys now in the hands of the Secretary of State."

There was also involved in this case the interpretation of a statute of Congress with reference to the powers conferred and duties imposed thereby on the executive. Section 1 of this statute provided:

*"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of State be, and he is hereby, authorized and required to receive any and all moneys which may be paid by the Mexican Republic under and in pursuance of the conventions between the United States and the Mexican Republic for the adjustment of claims, concluded July fourth, eighteen hundred and sixty-eight, and April twenty-ninth, eighteen hundred and seventy-six; and whenever, and as often as, any installments shall have been paid by the Mexican Republic on account of said awards, to distribute the moneys so received in ratable proportions among the corporations, companies, or private individuals respectively in whose favor awards have been made by said commissioners, or by the umpires, or to their legal representatives or assigns, except as in this act otherwise limited or provided, according to the proportion which their respective awards shall bear to the whole amount of such moneys then held by him, and to pay the same, without other charge or deduction than is hereinafter provided, to the parties respectively entitled thereto. And in making such distribution and payment, due regard shall be had to the value at the time of such distribution of the respective currencies in which the said awards are made payable; and the proportionate amount of any award of which by its terms the United States is entitled to retain a part shall be deducted from the payment to be made on such award, and shall be paid into the Treasury of*

the United States as a part of the unappropriated money in the Treasury." (20 Stat. L., p. 144.)

Concerning this section the court said:

"2. The first section of the Act of 1878 authorizes and requires the Secretary of State to receive the moneys paid by Mexico under the Convention, and to distribute them among the several claimants, but it manifests no disposition on the part of Congress to encroach on the power of the President and Senate to conclude another Treaty with Mexico in respect to any or even all the claims allowed by the Commission, if in their opinion the honor of the United States should demand it. At most, it only provides for receiving and distributing the sums paid without a protest or reservation, such as, in the opinion of the President, is entitled to further consideration. It does not undertake to set any new limits on the powers of the Executive." (110 U. S., 63.)

The fifth section of the same act contained the following stipulation:

"SEC. 5. And whereas the government of Mexico has called the attention of the government of the United States to the claims hereinafter named with a view to a rehearing; therefore be it enacted, that the President of the United States be and he is hereby requested to investigate any charges of fraud presented by the Mexican government as to the cases hereinafter named, and if he shall be of the opinion that the honor of the United States, the principles of public law or considerations of justice and equity, require that the awards in the cases of Benjamin Weil and La Abra Silver Mining Company, or either of them, should be opened and the cases retried, it shall be lawful for him to withhold payment of said awards, or either of them until such case or cases shall be retried and decided in such manner as the governments of the United States and Mexico may agree, or until Congress shall otherwise direct. And in case of such retrial and decision, any moneys paid or to be paid by the Republic of Mexico in respect of said awards respectively, shall be held to abide the event, and shall be disposed of accordingly; and the said present awards shall be set aside, modified or affirmed as may be determined on such retrial: *Provided*, That nothing herein shall be construed as an expression of any opinion of Congress in respect to the character of said claims or either of them." (20 Stat. L., p. 145.)

The court interpreted this section as follows:

"The fifth section, as we construe it, is nothing more than an expression by Congress, in a formal way, of its desire that the President will, before he makes any payment on the Weil or La Abra claims, investigate the charges of fraud presented by Mexico, 'And if he shall be of the opinion that the honor of the United States, the principles of public law or considerations of justice and equity require that the awards \* \* \* or either of them should be opened and the cases retried', that he will 'withhold payment \* \* \* until the case or cases shall be retried and decided in such manner as the Governments of the United States and Mexico may agree, or until Congress shall otherwise direct.' From the beginning

to the end, it is, in form even, only a request from Congress to the Executive. This is far from making the President for the time being a *quasi* judicial tribunal to hear Mexico and the implicated claimants and determine once for all as between them, whether the charges which Mexico makes have been judicially established. In our opinion, it would have been just as competent for President Hayes to institute the same inquiry without this request as with it; and his action with the statute in force is no more binding on his successor than it would have been without. But his action as reported by him to Congress is not at all inconsistent with what has since been done by President Arthur. He was of opinion that the disputed 'Cases should be further investigated by the United States to ascertain whether this Government has been made the means of enforcing against a friendly power, claims of our citizens based upon or exaggerated by fraud,' and, by implication at least, he asked Congress to provide him the means 'of instituting and furnishing methods of investigation which can coerce the production of evidence or compel the examination of parties or witnesses.' He did report officially that he had grave doubts as to the substantial integrity of the Weil claim and the 'Sincerity of the evidence as to the measure of damages insisted upon and accorded in the case of the La Abra \* \* \* Company.' The report of Mr. Evarts can not be read without leaving the conviction that if the means had been afforded the inquiries which Congress asked for would have been further prosecuted. The concluding paragraph of the report is nothing more than a notification by the President that unless the means are provided, he will consider that the wishes of Congress have been met, and that he will act on such evidence as he has been able to obtain without the help he wants. From the statements in the answer of Secretary Frelinghuysen in the *Key Case*, it appears that further evidence has been found, and that President Arthur, upon this and what was before President Hayes, has become satisfied that the contested decisions should be opened and the claims retried. Consequently, the President, believing that the honor of the United States demands it, negotiated a new Treaty, providing for such a reexamination of the claims, and submitted it to the Senate for ratification. Under these circumstances it is, in our opinion, clearly within the discretion of the President to withhold all further payments to the relators until the diplomatic negotiations between the two Governments on the subject are finally concluded. That discretion of the Executive Department of the Government can not be controlled by the judiciary." (110 U. S., 63.)

The Senate having refused its advice and consent to the treaty (referred to by the court) which the President had submitted to it, an assignee of the claimant Weil again sought to compel the Secretary of State to distribute the fund (part of which he was still retaining) on the ground that the President's lawful control of the fund continued merely during the pendency of the proposed treaty, and that he, therefore, was no longer rightfully withholding payment. The court, in declining to grant the mandamus asked for in this case, used the following language:

"It is contended, however, that, in this instance, the final custody of the money was vested by the act of June 18, 1878, solely in the Secretary of State, and that it was thereby made his duty to distribute and pay the awards to the claimants independently of the direction or control of the President. But the act thus referred to as the basis of this application, when considered throughout as it must be, not only does not undertake to impose the payment of these awards as an independent duty upon the Secretary, but specifically subjects such payment to the control of the President. The Secretary of State was, indeed, authorized and required by the first section to receive from Mexico the whole money awarded, and to distribute the same from time to time as the installments came in, among those in whose favor awards had been made, or to their legal representatives or assigns, but this was accompanied by the restriction, explicitly expressed, out of abundant caution, 'except as in this act otherwise limited or provided.'

\* \* \* \* \*

"The principal propositions urged by counsel are, that 'the award made against Mexico in favor of Benjamin Weil remains a final and conclusive adjudication in favor of a citizen of the United States against a foreign government;' that 'the United States have not now and never have had any property, right or interest in the original claim or the award, or in the money paid in by Mexico to meet and satisfy it;' that 'the money so paid is, by the terms of a statute, in the official custody of the Secretary of State; the President of the United States has now no lawful control over it, and never had any lawful control over it, excepting for a temporary purpose during the pendency of a new treaty in the Senate; that control ended when the Senate rejected the new treaty.'

"These propositions have already been substantially disposed of by the decision of this court in *Frelinghuysen v. Key* (110 U. S., 63), from the principles announced in which we have no disposition to recede. It was there ruled, Mr. Chief Justice Waite delivering the opinion, that there was no doubt as to the conclusiveness of the awards under the convention of July 4, 1868, but that the language of the treaty was to be construed as used in a compact between two nations for the adjustment of the claims of the citizens of either against the other; that citizens of the United States having claims against Mexico were not parties to the convention; that while the claims of individual citizens were to be considered by the commission in determining amounts, the whole purpose of the convention was to ascertain how much was due from one government to the other on account of the demands of their respective citizens; that, as between the United States and Mexico, the awards were final and conclusive until set aside by agreement between the two governments or otherwise; that the right of the United States to treat with Mexico for a retrial was unquestionable; that each government, when it entered into the compact under which the awards were made, relied on the honor and good faith of the other for protection, as far as possible, against frauds and impositions by the individual claimants; and that where a fraudulent claim or false testimony was presented by a citizen for reference to the commission, this was an imposition on his own government, and it would be not only its right but its duty to repudiate the act, if it afterwards

discovered that it had in this way been made an instrument of wrong toward a friendly power." (*Boynton v. Blaine* [1890] 139 U. S., 306, 320-321.)

After quoting the essential portions (as already set forth above) of the opinion of the court in *Frelinghuysen v. Key* regarding the effect of the provisions of the statute of 1878 upon the powers of the executive, the court continued:

"The new convention was then pending in the Senate, and it was clear that the discretion of the executive department of the government to withhold all further payments to the relators until the diplomatic negotiations between the two governments on the subject were finally concluded, could not be controlled by the judiciary.

"This is conceded by the relator, and such a concession is inconsistent with the contention that the award was a final and conclusive adjudication in Weil's favor, as an individual, against Mexico. As between nations, the proprietary right in respect to those things belonging to private individuals or bodies corporate within a nation's territorial limits is absolute, and the rights of Weil can not be regarded as distinct from those of his government. The government assumed the responsibility of presenting his claim, and made it its own in seeking redress in respect to it. Under this convention it was the balance that was to be paid, after deducting from what was found in favor of one government that which was found in favor of the other. So that the moneys paid in liquidation of that balance belonged to the United States, to be increased by appropriation to the extent of the amounts allowed Mexico, and the aggregate to be distributed to the claimants as might be provided." (*Boynton v. Blaine* [1890] 139 U. S., 323.)

The opinion of the court concludes as follows:

"So long as the political branch of the government had not lost its control over the subject matter by final action, the claimant was not in a position, as between himself and his government, to insist on the conclusiveness of the award as to him. And while it is true that for the disposition of the case of *Frelinghuysen v. Key* it was sufficient that it appeared that diplomatic negotiations were pending which, as the court demonstrated, the act of 1878 in no manner circumscribed, it does not follow that the political department of the government lost its control because those negotiations failed.

"On the contrary, that control was expressly reserved, for it was made the duty of the President, if of opinion that the cases named should be retried, to withhold payment until such retrial could be had in an international tribunal, if the two governments so agreed, or in a domestic tribunal if Congress so directed, and, at all events, until Congress should otherwise direct. The fact that a difference of view as to whether the retrial should be international or domestic may have arisen and led to delay, or that such difference may have existed on the merits, does not affect the conclusion. The inaction of Congress is not equivalent to a direction by Congress. The political department has not parted with its power over the matter, and the intervention of the judicial department can not now be invoked." (*Boynton v. Blaine* [1890] 139 U. S., 325-326.)

On this general phase of the question and with reference to the power of the executive in the premises, it seems appropriate to incorporate the opinion of Attorney General Wirt (rendered July 27, 1824) on "The Judiciary and the Executive." Although those observations of the opinion which deal with the nature of the ownership in the fund have not finally been followed by any of the three branches of government, yet The Attorney General's remarks regarding the constitutional powers of the executive are timely and pertinent to the present discussion:

"I have examined the case of James L. Cathcart, which you have submitted for my opinion. The case is, that the commissioners under the Spanish treaty have allowed to Mr. Cathcart a sum of money which, according to his memorial, he alone was authorized to receive. It now appears that there are other claimants on this fund, under titles derived, or alleged to be derived, from Mr. Cathcart, to wit: 1. John Woodside, as trustee for Mrs. Cathcart; 2. Richard Smith, cashier of the office of discount and deposits of the United States, as assignee of J. Woodside; and, 3. William Robertson, holding a special lien on this Spanish claim from Mr. Cathcart, as additional security for the payment of certain bonds given by Mr. Cathcart to Mr. Robertson, for the purchase of a tract of land in Virginia, &c. Mr. Robertson has filed a bill in the chancery side of the court of the United States for the District of Columbia, by which he seeks to enforce this lien thus created in his favor by Mr. Cathcart. He controverts the claims of Mr. Woodside, Mrs. Cathcart, and Mr. Smith; and asks that the officers of the Government may be enjoined from paying the sum so awarded, to either of the other parties, &c. An injunction has been granted in conformity with this prayer. And the questions which you propound to me are—

"1. Whether, in any case, an injunction is binding on the executive department of the government? 2. If so, whether the injunction stated is binding on the officers of the treasury? 3. Whether the case submitted is such as to render it expedient to respect the injunction in this instance? 4. If not, in whose name, (according to the state of the case as presented by the documents accompanying your letter) can a warrant legally issue? On the first and second questions, I am of the opinion that it is not in the power of the judicial branch of our government to enjoin the executive from any duty specially devolved on it by the legislative branch of the government, or by the constitution of the United States. If it were otherwise, it would be in the power of the judicial branch of the government to arrest the whole action of the other two branches.

"My opinion is, that the judiciary can no more arrest the executive in the execution of a constitutional law, than they can arrest the legislature itself in passing the law. It would be easy to show that the existence of such a power in the judiciary would place the existence, not only of the government, but of the nation itself, at the mercy of that body, in every crisis both of war and peace. It is, therefore, in my opinion, essential to the government itself to assert, for the executive branch, this independence of action. Yet, nevertheless, I am of the opinion that there are cases in which the courts will be found a useful auxiliary

to the executive, and promotive of the purposes of justice, to abide the decision of a court. Where a law, for example, is so formed, or the evidences of rival claims are so poised, as to render it doubtful which, of several individuals, is entitled to the benefit of a private law, and the parties have commenced a litigation before a court by which their relative rights are to be adjusted, I can perceive no inconvenience; but, on the contrary, much convenience which would result to the executive department from their accepting the aid of a court in adjusting the relative rights of the parties.

"The forms of proceeding in court give them advantages for the fair settlement of these controversies which are not enjoyed by the Executive. The permitting a judicial tribunal, therefore, to draw such subjects to its arbitrations is calculated to relieve the Executive from a very onerous burden, which the judiciary can bear to more advantage; it is calculated to promote the purposes of private justice; and, at the same time, leaves the Executive in full possession of the principles of independence which I have mentioned, whenever the public good shall call for its exercise. I am, therefore, of the opinion, that in all cases in which the government is a mere stakeholder, and several individuals are claiming the benefit of a fund, with regard to which it is immaterial to the government and the essential purposes of the law whether it be ascertained to be due to the one individual or the other, the officers of the treasury would exercise a sound discretion in referring them to the courts for the decisions of their respective rights; or, if persons so circumstanced shall have spontaneously commenced the litigation of their rights before a court, and the officers of the treasury shall have notice of the suit, by an injunction or otherwise, I should think it expedient for them to suspend their action under the law, until the court shall have decided on the subject. I would not advise those officers to acknowledge the jurisdiction of the court, by appearing to the suit as parties; this might involve them in expense and trouble. All that I would recommend, in such a case, is a forbearance to act until the court shall have decided; and a payment according to the decision, when the decision shall be finally made.

"To your third question, therefore, I answer that the case submitted is such a one as to render it expedient to respect the injunction to the extent that I have mentioned. All the preliminary steps in the adjustment of the accounts to the time of issuing the warrant may be gone through, without prejudice to any one; but I would recommend that the warrant be withheld until the court shall have decided who is entitled to the money, and then issued to the individuals so decided to be entitled. There are peculiar reasons which render this course especially proper at the present instance. Those may be found in the statement made by Mr. Cathcart in his memorial to the commissioners, that *he alone* was entitled to receive the money, compared with his deed in favor of Mrs. Cathcart, and his agreement with Mr. Robertson; and in the extract which you furnished me from the report of the commissioners. But I forbear to press these peculiar circumstances, because, under the general rule which I have already stated, I should think this a proper case to abide the decision of a court.

"This answer to your third question renders it unnecessary to answer your fourth.

"The documents are returned." (1 Op. Atty. Gen'l., 681-684.)

It is, therefore, believed that for all questions regarding the international phases (save as to such matters as were involved in the La Abra and Weil cases, discussed below) the executive may be regarded as possessing certain plenary powers. The exact delimitation of such powers would probably be difficult, and as the question is not pertinent to the present inquiry it will not be pursued.

### *Control by Congress*

But it seems clear from the cases that in connection with these international phases Congress also may have (as just suggested) certain plenary powers. Indeed such powers were exercised in connection with the disposition of these same La Abra and Weil cases, when Congress later, in 1892, passed certain acts referring to the Court of Claims the question of whether or not the awards had been secured by fraud. The constitutionality of these acts being attacked, the Supreme Court in *La Abra Silver Mining Co. v. United States* ([1899] 175 U. S., 423) said:

“\* \* \* The question for the determination of which the present suit was directed to be instituted was whether the award made by the Commission in respect to the claim of the La Abra Company was obtained as to the whole sum included therein or as to any part thereof, by fraud effectuated by means of false swearing or other false and fraudulent practices on the part of the company, or its agents, attorneys or assigns. It can not, we think, be seriously disputed that the question whether fraud has or has not been committed in presenting or prosecuting a demand or claim before a tribunal having authority to allow or disallow it is peculiarly judicial in its nature, and that in ascertaining the facts material in such an inquiry no means are so effectual as those employed by or in a court of justice. The Executive branch of the Government recognized the inadequacy for such an investigation of any means it possessed, and declared that Congress by its ‘plenary authority’ ought not only to decide whether such an investigation should be made, but provide an adequate procedure for its conduct and prescribe the consequences to follow therefrom. The suggestion that the question of fraud be committed to the determination of a judicial tribunal first came from the Executive branch of the Government. Undoubtedly Congress, having in view the honor of the Government and the relations of this country with Mexico, could have determined the whole question of fraud for itself, and by a statute, approved by the President, or which being disapproved by him was passed by the requisite constitutional vote, have directed the return to Mexico, the other party to the award, of such moneys as had been paid into the hands of the Secretary of State. It is also clear that in the absence of any statute suspending the distribution of such moneys, the President could have ignored the charges of fraud and ordered the distribution to proceed according to the terms of the treaty and the award.

But it does not follow that Congress was without power, no distribution having been made, to control the whole matter by plenary legislation (pp. 459-460.)

"\* \* \* It is therefore difficult to perceive any ground upon which to question its power to make the distribution of moneys in the hands of the Secretary of State—representing in that matter the United States and not simply the President—depend upon the result of a suit by which the United States would be bound and in which the claimants to the fund in question could be heard as parties, and which was to be brought in a court of the United States by its authority, for the purpose of determining whether the La Abra Company, its agents or assigns had been guilty of fraud in the matter of the claim that it procured to be presented to the commission. The act of 1892 is to be taken as a recognition, so far as the United States is concerned, of the legal right of the Company to receive the moneys in question unless it appeared upon judicial investigation that the United States was entitled, by reason of fraud practiced in the interest of that corporation, to withhold such moneys from it. Here then is a matter subjected to judicial investigation in respect of which the parties assert *rights*—the United States insisting upon its right under the principles of international comity to withhold moneys received by it under a treaty on account of a certain claim presented through it before the Commission organized under that treaty in the belief, superinduced by the claimant, that it was an honest demand; the claimant insisting upon its absolute legal right under the treaty and the award of the Commission, independently of any question of fraud, to receive the money and disputing the right of the United States upon any ground to withhold the sum awarded. We entertain no doubt these rights are susceptible of judicial determination within the meaning of the adjudged cases relating to the judicial power of the courts of the United States as distinguished from the powers committed to the Executive branch of the Government (pp. 460-461).

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"Much was said in argument about the interference by the act of 1892 with the discharge by the President of his constitutional functions in connection with matters involved in the relations between this country and the Republic of Mexico. For reasons already given this contention can not be sustained. It is without support in anything done or said by the eminent jurists who have presided over the Department of State since the controversy arose as to the integrity of the claim made by the La Abra Company. On the contrary, those officers have uniformly insisted that the authority of Congress was plenary to determine whether the award in respect of those claims was procured by fraud practiced on the part of that Company and whether in that event the Company should be barred of any claim to the moneys received from the Republic of Mexico. Upon this question the legislative and executive branches of the Government have acted in perfect harmony. The question arises under the Constitution of the United States and a treaty made by the United States with a foreign country, is judicial in its nature, and one to which the judicial power of the United States is expressly extended. Both branches of the Government were concerned in the enactment subjecting that question to judicial determination, and it can not properly be said that the President by approving the act of 1892 or by recogniz-

ing its binding force surrendered any function belonging to him under the supreme law of the land" (p. 462).

It is believed, however, that such plenary power of the Congress should be understood as referring to, and connected with, and indeed as auxiliary to, the fulfillment of certain of our international obligations in such matters, and that the power should be exercised in affording means for carrying out such obligations where such means do not reside in the executive; for example, the determination of the question of whether fraud has or has not been practiced being a question which under our system is distinctively judicial rather than executive, and, moreover, the executive not having the machinery necessary adequately to conduct a judicial investigation, Congress has plenary power in the matter for the purpose of determining how that judicial question regarding fraud shall be determined. It is thought that the language of the cases should be understood in this sense rather than in the sense that the Congress as such has any part or function in the political branch of the government or in the performance of the duties of that branch.

But it would seem equally clear and sound with reference to the jurisdiction of Congress that when these funds have been received and the international aspects have been cleared up, then the funds being national funds their distribution is a matter in which the Congress has plenary jurisdiction if it chooses to act, and that Congress having acted either on a specific case or by general legislation the distribution must be made under such rules and regulations as the Congress has seen fit to provide.

In this connection, and with reference to the statement of the court regarding the agreement between the executive and legislative branches of the government regarding the plenary nature of the powers of the Congress in the premises, the following extracts from letters from Secretary Evarts to the President, in which is used the expression referred to by the court, should be considered.

In a letter to the President dated August 13, 1879, and marked "confidential," Secretary Evarts said, in connection with an investigation of the fraud charged in the La Abra and Weil cases:

"The authority for such an investigation must proceed from Congress. I would advise, therefore, that the proofs and conclusions you shall come to thereon, if adverse to the immediate payment on these awards of the installments re-

ceived from Mexico, be laid before Congress for the exercise of their plenary authority in the matter." (Ex. Doc. No. 103, 48th Cong., 1st sess., p. 582.)

In a letter to the President dated April 30, 1880, on the same general subject, Secretary Evarts used this language:

"The parties interested in these awards have from time to time preferred requests for a renewed consideration by the Executive of the questions arising for his determination under the act of Congress of June 18, 1878, and have particularly insisted that, in deciding against opening these awards diplomatically and reexamining them by a new international commission, the whole discretion vested in the Executive as a part of the treaty-making power and under the special provision of the act of Congress was exhausted, and that the payments should be no longer suspended in respect of these cases, or either of them. A solicitous attention to the rights of the claimants and the duty of the Executive in the premises has confirmed me in the opinion that Congress should determine whether 'the honor of the United States' requires any further investigation in these cases, or either of them, and provide the efficient means of such further investigation if thought necessary.

\* \* \* \* \*

"While these considerations led to the conclusion that these cases ought not to be made the subject of a new international commission, I was yet of opinion that 'the honor of the United States' was concerned to inquire whether in these cases submitted by this Government to the Commission its confidence has been seriously abused, and the Government of Mexico, acting in good faith in accepting a friendly arbitration, had been subjected to heavy pecuniary imposition by fraud and perjury in the maintenance of these claims, or either of them, before the Commission. In furtherance, however, of this opinion it seemed to me apparent that the Executive discretion under the act of Congress, could extend no further than to withhold further payments on the awards until Congress should, by its plenary authority, decide whether such an investigation should be made, and should provide an adequate procedure for its conduct, and prescribe the consequences which should follow from its results." (Ex. Doc. 103, 48th Cong. 1st sess., pp. 742, 743.)

The opinion of the committees of the House of Representatives on this matter is not without interest. In 1877 the Committee on Foreign Affairs, reporting on a proposed joint resolution directing the Secretary of the Treasury to pay no more moneys on the La Abra and Weil claims until further information was obtained by Congress, said:

"The committee are of the opinion that the House of Representatives has no jurisdiction over the subject matter referred by the joint resolution, and that the Mexican Republic has not made, and could not properly make, any application to the legislative department of this government.

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"The committee do not wish to be understood as expressing any opinion upon the questions of fraud and perjury suggested by the representatives of Mexico, *as indicated by the resolution referred to this committee*, nor as saying that any application which has been or may be made by Mexico to the executive department of this government should not be entertained by it, or that the relief sought should not be granted. It is the opinion of the committee that the question presented, in so far as it relates to payment of money under the awards received from Mexico, is entirely within the jurisdiction and discretion of the treaty-making power under the Constitution, and that the Executive is, with the concurrence of the Senate, fully empowered to open negotiations with Mexico by further treaty, if the two powers can concur therein, to accomplish the relief asked for; and if, in the opinion of the President, such frauds have been practiced as to entitle Mexico to relief, this committee would be gratified to know that proper steps would be taken to that end." (House Report No. 27, 45th Cong., 2d sess., pp. 6 and 8.)

Later, in 1886, Mr. Daniel, of the Committee on Foreign Affairs, submitting the majority report of the committee, said:

"HAS CONGRESS THE CONSTITUTIONAL POWER TO REOPEN THE AWARD AND ORDER A NEW TRIAL?"

"We have no doubt that Congress may waive the benefits of the treaty with Mexico and reopen the case decided in favor of La Abra Company. Sir Edward Thornton took such power for granted as an attribute of our national sovereignty. The existence of such power is sustained by a number of precedents, and to a certain extent it has already been exercised by Congress in the act of 1878 suspending payment of the sums awarded, and of which the present bill is amendatory. The President assumes and the Secretary of State asserts it, and in *Key v. Frelinghuysen* the Supreme Court affirmed it.

"While we thus recognize the power of Congress to intervene, we must not forget the circumstances under which intervention is asked, nor fail to remember that only extraordinary and very cogent circumstances would warrant it." (House Report No. 3474, 49th Cong., 1st sess., pp. 1, 2.)

Still later, in 1892, Congress passed the acts providing for the litigation in the Court of Claims of the question whether or not fraud existed in these cases.

In 1896 Congress passed a general act (quoted hereinafter) providing a method for distribution of all funds of this general character received from foreign governments, so that at the present time the international phases being finished, the national phase attaches under a permanent statute giving certain powers and imposing certain duties on the Secretary of State.